

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

In Re: ASBESTOS PRODUCTS :
LIABILITY LITIGATION (No. VI) : Civil Action No:
: MDL 875
This Document Relates Only to the :
Cases Identified on the Attached List :
(Hereinafter referred to as CVLO-1) :

AMENDED CASE MANAGEMENT AND SCHEDULING ORDER FOR CVLO-1

AND NOW, this 4th day of August, 2011, following upon suggestions of counsel as to how our "Case Management and Scheduling Order for CVLO-1" of July 15, 2011 might be modified in order to more effectively facilitate the movement of the cases in the MDL-875 filed by the Cascino Vaughan Law Offices toward final disposition, **IT IS HEREBY ORDERED THAT** the "Case Management and Scheduling Order" of July 15, 2011 is superceded by this Order, and, as to the cases identified in Exhibit "A," the following discovery and pretrial management deadlines shall apply:

1. Defendants shall file any motions to dismiss based upon noncompliance with Administrative Order No. 12 by: July 29, 2011
2. Plaintiffs shall respond to any such motions to dismiss by: August 5, 2011
3. All medical evidence in plaintiffs' possession, or that will be presented to, or relied upon by, plaintiffs' experts, including X-rays, pathology, and 524(g) bankruptcy trust submissions shall be submitted to IKON by: August 1, 2011
4. HIPPA-compliant medical authorizations shall be submitted to the defense by: August 1, 2011
5. All discovery relating to medical diagnosis, including medical records and related records discovery, must be completed by: September 9, 2011

- 5A. Discovery requests regarding product-specific and exposure evidence pursuant to Federal Rules of Civil Procedure 33, 34, and 36 may be issued at any time. However, the parties are precluded from taking any depositions pertaining to questions of product identification and exposure before September 12, 2011 unless counsel for all interested parties agree or any particular proposed deponent is suffering from a serious medical condition such as to be deemed *in extremis*. Further, to the extent such depositions have already been noticed, they are permitted to go forward as scheduled.
6. Plaintiffs shall file any plaintiff-specific expert reports relating to medical diagnosis by: September 23, 2011
7. Defendants shall file any plaintiff-specific expert reports relating to medical diagnosis by: October 7, 2011
8. Discovery relating to medical diagnosing experts, including depositions, must be completed by: October 21, 2011
9. Any motions *in limine* seeking to exclude medical diagnosing experts must be filed by: October 28, 2011
10. Responses to any motions *in limine* seeking to exclude medical diagnosing experts must be filed by: November 11, 2011
11. Replies to any motions *in limine* seeking to exclude medical diagnosing experts must be filed by: November 18, 2011
12. All remaining fact discovery must be completed by: December 30, 2011
13. Plaintiff's remaining expert reports must be filed by: January 13, 2012
14. Defendants' remaining expert reports must be filed by: January 27, 2012
15. All remaining expert discovery must be completed by: February 10, 2012
16. Any dispositive motions must be filed by: February 24, 2012
17. Responses to any dispositive motions must be filed by: March 9, 2012
18. Replies to any dispositive motions must be filed by: March 16, 2012

19. Responses to requests for documents, and other paper discovery must be served by production to the IKON Depository, and accessed pursuant to Judge Reed's Order of March 28, 2011.
20. Depositions conducted during discovery are to be governed by the Federal Rules of Civil Procedure, as modified by the Deposition Protocol attached as Exhibit "B" and any future protocol agreed to by the parties and approved by the Court.
21. Discovery is not to occur in any cases filed by Cascino Vaughan Law Offices which have not been placed on a scheduling order (such as the June 9, 2011 Scheduling Order in "Certain Cascino Vaughan Law Offices Cases"). The Court will entertain, however, from any party a request for leave to take a deposition of any individual with relevant information who is suffering from a serious medical condition such as to be deemed *in extremis*. Such a deposition is not to be noticed unless leave of court has been given.
22. The role of defense liaison counsel will be to coordinate communications between the defense and the Court and to work with plaintiffs' counsel to come to agreement on broad issues. However, to the extent any party should have a particular objection or issue with regard to any case, that party is free to deal with plaintiffs' counsel directly.
23. A settlement conference, with client representatives to be in attendance in person, shall take place at such time as the Court, upon the recommendations of the parties or otherwise, deems appropriate.

BY THE COURT:

/s/ David R. Strawbridge
DAVID R. STRAWBRIDGE
UNITED STATES MAGISTRATE JUDGE

EXHIBIT A

Last Name	First Name	PA-ED Case #
Aberle	Glenn	08-CV-91650
Alsene	Delmar	08-CV-92187
Anuszkiewicz	Roman	08-CV-90938
Ayers	Mark	08-CV-91953
Bark	James	10-CV-64542
Barnett	Roscoe	10-CV-68919
Bault	Charles	08-CV-91663
Beach	Laundy	10-CV-68142
Beddow	Merle	08-CV-92239
Beeney	Donald	08-CV-91728
Bell	Orville	08-CV-92260
Bement	James	10-CV-67615
Bennett	Bob	08-CV-91585
Bennett	Clifford	08-CV-90082
Bennett	Jack	10-CV-68968
Black	John	10-CV-68110
Bodine	Richard	08-CV-92055
Branchfield	Del	08-CV-91587
Breeding	Richard	08-CV-90273
Brooks	Ray	08-CV-92194
Brown	Carl	10-CV-68436
Brownlee	Theodore	08-CV-91954
Buchanan	Michael	10-CV-68074
Bugg	William	08-CV-91729
Burton	Alice	08-CV-92139
Burton	William	08-CV-92309
Castros	Arol	08-CV-91760
Centers	Albert	08-CV-90268
Chavez	Richard	08-CV-90342
Cohen	Ronald	09-CV-64755
Cox	Charles	08-CV-91866
Cox	Donald	08-CV-92244
Craddock	John	10-CV-68114
Crain	Paul	08-CV-89841
Craven	John	10-CV-67678
Cripe	George	08-CV-91940
Cromwell	Joseph	08-CV-92301
Cummings	Ronald	10-CV-68902
Dalton	Jack	08-CV-91944
Darling	William	08-CV-92236
Davis	Edgar	08-CV-92201

Deaville	Kenneth	08-CV-92064
Delks	Carol	08-CV-88681
Deters	Cletus	10-CV-64585
Dodd	Carl	08-CV-91578
Dover	Jackie	10-CV-68127
Dual	Monte	08-CV-92314
Dubois	Charles	08-CV-92119
Ebert	Michael	08-CV-89432
Edbrooke	Richard	08-CV-92254
Edwards	Terry	08-CV-92137
Endsley	Robert	08-CV-92025
Estock	Robert	08-CV-92026
Fadler	Donald	08-CV-90220
Fields	William	10-CV-68082
Fisher	Pascal	08-CV-92173
Fonner	Larry	08-CV-92222
Fraboni	Louis	08-CV-91671
Frampton	Kenneth	08-CV-92160
Gabbard	Ben	08-CV-92151
Gabbard	Robert	08-CV-92145
Gaines	James	08-CV-92305
Gard	Leslie	08-CV-91736
Gard	Robert	10-CV-67613
Garecht	Robert	08-CV-92134
Geiger	Gerald	08-CV-91676
Giuliano	William	09-CV-64609
Goetsch	Randall	08-CV-91673
Graves	William	08-CV-92120
Green	Robert	08-CV-92311
Grier	David	08-CV-91657
Grier	John	08-CV-91687
Hamann	Kenneth	08-CV-92181
Harris	Robert	08-CV-91589
Harrison	Hollis	08-CV-92141
Hart	Andrew	08-CV-91674
Hatfield	Bobby	08-CV-92147
Helpers	Carl	08-CV-92196
Helton	Burl	09-CV-61719
Henney	Jean	09-CV-64629
Hess	Roy	08-CV-92180
Hill	John	10-CV-64557
Hockings	Daniel	08-CV-89796
Holden	Michael	08-CV-92154

Horn	Richard	10-CV-68096
Hoskins	Adam	08-CV-89474
Hubert	William	08-CV-92068
Hulmes	Darrell	08-CV-92135
Hutchinson	Jack	08-CV-92157
Hyland	Gerald	08-CV-91862
Irons	Gary	10-CV-68130
Jackson	William	08-CV-92189
Jacobs	Larry	10-CV-68100
Janko	Albert	08-CV-91675
Jennings	Billy	08-CV-91757
Jindresek	Walter	08-CV-91858
Johnson	Dorothy	08-CV-91691
Johnson	Leo	08-CV-91661
Johnson	Richard	08-CV-92122
Kelly	Robert	08-CV-91696
Kennedy	Roy	08-CV-89492
Kittleson	Alfred	08-CV-91887
Knapp	Jimmy	08-CV-91763
Kruse	Patrick	08-CV-91867
La Hood	Harry	10-CV-68131
Lawless	Anthony	08-CV-92161
Liston	Frank	11-CV-66749
Lower	Garry	10-CV-68129
Manderino	Joseph	09-CV-60695
Marcogliese	Frank	08-CV-89497
Maresca	Joseph	08-CV-90328
Martin	David	10-CV-61109
Matheney	Roy	08-CV-91955
Maulding	Duane	08-CV-92113
May	Dale	08-CV-92116
Mayer	Louis	10-CV-68227
McMahill	Clair	10-CV-68126
Meischner	Donald	09-CV-60645
Meischner	Gisela	08-CV-92192
Meischner	Leonard	08-CV-91758
Meischner	Richard	09-CV-60648
Millard	Eugene	10-CV-68119
Minor	John	08-CV-91969
Moore	George	08-CV-91869
Morr	Lee	08-CV-92152
Morris	David	08-CV-92162
Morthole	Edward	08-CV-91868

Morton	Kenneth	08-CV-92253
Nall	Clyde	08-CV-90084
Nelms	Kenneth	08-CV-91666
Nichols	Gerald	10-CV-68097
Nichols	Leonard	10-CV-68105
O'Boyle	Darrell	10-CV-68087
O'Keefe	Robert	08-CV-92210
Palsgrove	Joseph	08-CV-89373
Peterson	Robert	08-CV-92040
Peterson	William	08-CV-92224
Phares	Millard	10-CV-68866
Phipps	Paul	08-CV-92220
Pierce	James	10-CV-68094
Pittman	Frank	08-CV-89441
Plue	Alvin	08-CV-91596
Plue	Richard	10-CV-68073
Poe	Richard	10-CV-68107
Potts	Stanley	08-CV-91872
Powell	Dale	08-CV-82923
Powell	John	08-CV-92012
Powell	Thomas	08-CV-91885
Prather	James	08-CV-89745
Rasner	Donald	08-CV-92143
Reed	Odell	10-CV-61353
Reinhardt	Gary	08-CV-92131
Reinoehl	Donald	08-CV-89460
Riggs	Irving	08-CV-91762
Rogers	John	08-CV-92167
Sams	Phillip	08-CV-88575
Schlemer	Carl	08-CV-89470
Schroeder	Carl	10-CV-64552
Schuck	Walter	08-CV-92205
Seifert	William	08-CV-92171
Short	Johnnie	08-CV-92164
Smith	Orville	10-CV-68104
Smith	Ronald	08-CV-90287
Snyder	Ameses	08-CV-92225
Spangler	Herbert	08-CV-91882
Sprague	Billy	08-CV-90112
Stariha	William	09-CV-64725
Taylor	James	08-CV-91881
Thomas	Glendel	08-CV-92206
Thurman	Ernest	08-CV-92188

Tonarelli	Russell	08-CV-91665
Tovey	Robert	08-CV-92133
Walker	Clarence	08-CV-92136
Wallman	RJ	08-CV-88587
Ware	William	08-CV-92159
Waterstradt	Henry	08-CV-92045
Weber	Daniel	08-CV-92132
Wesley	Keith	10-CV-64570
White	Donald	08-CV-92036
Whiteman	Robert	08-CV-92299
Williams	Lloyd	08-CV-91588
Williamson	Henry	08-CV-92169
Williamson	Richard	08-CV-91878
Wilson	Merle	08-CV-91879
Winders	Berlie	08-CV-92061
Wittmeyer	Austin	08-CV-91739
Workman	John	10-CV-68071
Schurtz	Michael	08-CV-91742
Sears	Randall	09-CV-64631
Smith	Harry	08-CV-91079
Turner	Larry	08-CV-89903
Unzicker	Leonard	11-CV-66288
Wiker	Philip	08-CV-92207
Winslow	Terry	08-CV-92114
Wright	Randall	08-CV-89966

EXHIBIT B

Protocol for Plaintiff and Co-Worker depositions to be taken in Cascino Vaughan Law Offices MDL 875 cases assigned to Magistrate Judge David R. Strawbridge

1. This protocol shall supercede any preceding agreed-upon, or ordered, protocol. It shall apply to all cases designated as the “First Ten” or “Top Ten” as well as the cases designated as CVLO-1, which are those subject to the court’s “Amended Case Management and Scheduling Order for CVLO-1.” It is further contemplated that the protocol shall apply to all of the CVLO cases assigned to this Magistrate Judge as they become the subject of scheduling orders over the next 18 months or so. As to any depositions already noticed, but not yet taken, this protocol shall apply to the extent that the parties have previously agreed upon certain provisions contained within the protocol, or have agreed to other procedures not contained within the protocol, and have been acting in accordance with those agreements, those agreements willll be considered binding.¹ Other than as provided in this protocol, the depositions will be conducted pursuant to the Federal Rules of Civil Procedure.
2. The parties will issue a separate notice of deposition for each deponent pursuant to Rule 30 of the Federal Rules of Civil Procedure. The notice shall contain a separate caption including the plaintiff's name and case number for each case in which the witness is being offered. The notice must be served upon all counsel of record in the case(s) listed in the caption at least 14 days before the proposed date. Depositions of plaintiffs and co-workers shall not be noticed as being taken “In re: All” cases. E-mail service is sufficient. The parties will endeavor to schedule depositions at hotel, court reporting agency or law firm conference rooms although the parties recognize some witnesses are unable to travel due to health or age. In addition to the information required by Rule 30, the notice of deposition will include the following:

the names of the plaintiff(s) and case number(s) in which the deposition is being taken

whether the testimony will be videotaped

the identity of the defendants about which the witness is expected to testify and if the witness is being offered in multiple cases, the identity of the defendants about which the witness is expected to testify and in which case the witness will offer that testimony

3. Objections by any defendant to the notice of deposition shall first be presented to counsel for plaintiff by e-mail to: cvlodep@gmail.com with a copy to all defense counsel of

¹We consider this to include any agreements reached between Robert McCoy, esq., as plaintiffs' counsel and Michael Drumke, esq. as defense liaison counsel in their efforts to draft a deposition protocol pursuant to our Letter Order of June 27, 2011 and subsequent conversations with them.

record in the case(s) listed on the notice at least seven (7) days before the scheduled deposition. Once an objection to the notice is raised, all defendants of record in the case(s) listed on the notice shall be deemed to have joined in the objection unless they specifically indicate otherwise. Repetitive or duplicative objections must not be made. Once an objection is raised, the parties shall attempt to resolve the objection(s) in good faith. Objections which cannot be resolved by the objecting defendant and plaintiff's counsel shall be presented to the Court for resolution at least three (3) days before the scheduled deposition.

4. The defendants attending the deposition will determine the order of the defense cross-examination. Redirect and recross are allowed. The parties may seek to extend or shorten the time limits set forth in the Federal Rules of Civil Procedure for reasonable cause and the Court anticipates cooperation in making such agreements. Each defendant shall be afforded a fair and reasonable opportunity to ask question of every witness.²
5. An objection by one party during the deposition is deemed asserted by all parties. Relevance objections are preserved and are not to be asserted. To expedite the taking of depositions, counsel must instruct witnesses on deposition procedures prior to commencement of the deposition on the record.
6. In order that parties do not needlessly attend depositions, any defendants who have been named, served, and who have entered their appearance(s) in the case(s) listed in the caption of the deposition notice may attend the deposition. However, if any defendant, who has been named, served and appeared in the case(s) listed in the caption of the deposition notice is not listed in the deposition notice as being the subject of expected testimony, that defendant shall not be required to, but may attend the deposition. Should

²Although there was some discussion between the parties with respect to including some time limit on the depositions which could not be exceeded except by agreement or leave of court, we decline to include such a limit in that there will likely be considerable variation with regard to the time necessary to complete particular depositions. As the comments to Federal Rule of Civil Procedure 30(d) recognize, the degree to which the default 7-hour limitation should be extended, if at all, depends upon several factors, including whether the examination covers long periods of time or lengthy documents, whether it is a multi-party case or a multi-case deposition and whether the lawyer for the witness also asks questions of the witness. We understand that these factors may apply to particular depositions to varying degrees, and expect that the attorneys will use their time efficiently to fully question the deponent while avoiding questions that are unnecessary or duplicative of questioning already conducted by another party. Should there be an abuse of this process, we remind the parties that sanctions may be imposed, including the award of reasonable expenses and attorneys fees, for conduct that "impedes, delays or frustrates the fair examination of a deponent." Fed. R. Civ. P. 30(d)(2).

any defendant that is not listed in the deposition notice as being the subject of expected testimony be unexpectedly implicated in said deposition, said defendant will be given an opportunity to examine the witness prior to any use of the deposition against that defendant. The purpose of this clause is to eliminate the need for parties to cross-examine a witness about the inability to provide testimony about a particular defendant which is not identified in the notice. If any defendant not listed in the notice of deposition is implicated in a deposition and any party to the notice wishes to use the testimony against the unlisted defendant, the party seeking to use the testimony shall provide notice within 14 days of the date of deposition to the unlisted defendant and schedule a time to resume the deposition for the purposes only of the testimony relating to the unlisted defendant. Failure to provide such notice within 14 days of the conclusion of the deposition shall constitute waiver of any rights by the parties to use the testimony against the unlisted defendants in any matter and such testimony shall be barred as against the unlisted defendants.

7. A party providing notice of videotaping shall be responsible for arranging the videotaping and paying the videographer's appearance fee, if any.
8. Parties may attend by telephone provided they make arrangements in advance through the court reporting services designated in paragraph 9 below and agree to pay their *pro rata* share of the costs for the teleconference. Parties attending by phone must keep phones muted during testimony, except for the purposes of asking questions or asserting objections, to prevent disruptive sounds. All parties appearing by phone shall be identified on the written record.
9. Each party shall pay the cost of obtaining deposition transcripts desired by the party. The parties agree to cooperate to obtain negotiated rates from a court reporting service. Unless otherwise agreed to by all parties or unless the designated firm is unable to provide court reporting services, the court reporting firm to be used for all depositions shall be:

For all non-Wisconsin depositions:

PohlmanUSA Court Reporting
10 South Broadway, Suite 1400
St. Louis, MO 63102
Phone: (877) 421-0099
Fax: (314) 421-1115
Website: <http://pohlmanusa.com>

For all Wisconsin depositions:

Gramann Reporting, Ltd.

710 North Plankinton Avenue, Suite 710
Milwaukee, WI 53203
Phone: (414) 272-7878 or (800) 899-7222
Fax: (414) 272-1806
After Hours: (262) 367-8295 or (414) 380-9885
Website: www.gramannreporting.com

10. Multiple depositions may be noticed on the same day and at up to three (3) locations per day providing that a party may seek to reschedule if experienced deposition counsel is not available to cover the second or third depositions.³ Without the agreement of all counsel of record in the case(s) listed in the caption of the deposition notice, no deposition shall be scheduled on a Saturday, Sunday, court holiday or on the day prior to or day of a court-mandated status conference in the matters assigned to Magistrate Judge Strawbridge at which plaintiff's counsel or defense liaison counsel are required to be present.
11. No deposition testimony may be used against any party that did not receive notice of the deposition. The parties further stipulate that deposition testimony against a party not represented at said deposition on account of that party's reliance upon the notice of deposition shall not be used against the unrepresented party.⁴
12. Any party may, no later than 10 days before the date of the deposition, cross-notice the deposition against a defendant not identified at the job sites in plaintiff's pleadings or answers to discovery without court approval if the defendant is a party in a case assigned

³ This allowance is made in recognition of the expedited discovery schedule under which counsel will be working. It is also a compromise between the positions of the parties, where plaintiffs' counsel wished to conduct up to four depositions in one day and defense counsel would agree to conduct only up to two depositions per day.

⁴The parties disputed the inclusion of this provision. While plaintiffs' counsel felt it was sufficient to rely upon the procedures set out in Paragraph 6 of the Protocol, defense counsel felt those procedures were insufficient. They expressed concern that any uncertainty regarding the future use of deposition testimony against a party who did not attend that deposition in reliance on its absence from the notice of deposition would encourage every defendant to have counsel present at each deposition to protect its rights should the deponent unexpectedly implicate them. It has already been decided by the Presiding Judge that deposition testimony may not be used in the MDL against a party who was not represented at the deposition. *Cowley v. AC&S*, Civ. No. 07-62831, Doc. No. 36 (E.D.Pa. Dec. 23, 2010). We make that principle explicit in this paragraph. Defense counsel also requested that the use of any deposition testimony be limited to cases in which Cascino Vaughan Law Offices represents the interests of the plaintiff, and for no other purpose. Given our unwillingness to engage in any speculation over the prospective use of any deposition, we decline to impose such a limitation.

to Magistrate Judge Strawbridge. If the defendant cross-noticed is a non-party in the case(s) listed on the notice, the cross-notice is subject to the consent of the non-party defendant.

13. Unless otherwise agreed to by counsel, no deposition may be noticed until plaintiff has complied with all orders regarding discovery applicable to the case, including those orders previously entered by Judge Reed during the mediation phase of this litigation. Discovery that has been timely served and is answerable prior to the date of the deposition shall be deposited with IKON by the date it is due so that it may be available for use prior to the deposition. Additionally, plaintiff's complete verified answers to standard interrogatories and complete fact witness disclosures, as well as any Social Security statement of earnings, military records, union records or medical records in the possession of the plaintiff or the plaintiff's attorneys shall be deposited with IKON in Chicago prior to the issuance of any notice of deposition of that plaintiff by plaintiff's counsel. If any of the aforementioned records are not in the possession of the plaintiff or plaintiff's attorneys, plaintiff shall provide signed authorizations to obtain those records to the defense at least 30 days prior to the date the deposition is to occur. Defense counsel may also request signed authorizations to obtain those records at any time, without regard to whether a notice of deposition has been issued in a particular case.⁵

⁵ This paragraph represents a resolution by the Court of a disagreement between the parties as to its precise terms. While the parties agreed that plaintiffs' counsel would provide answers to standard interrogatories, and any medical, military or union records, or bankruptcy claim forms in their possession prior to the issuance of a notice of deposition, they disagreed as to when the answers to the standard interrogatories were to be verified, as well as whether plaintiffs' counsel would provide fact witness disclosures or Social Security statements of earnings. Additionally, there was disagreement as to whether any deadline should be included for the provision of authorizations allowing defense counsel to obtain such records independently.

We conclude that defense counsel is entitled to verified answers to interrogatories and fact witness disclosures prior to the issuance of a notice of deposition. We do not anticipate that this will be unduly burdensome considering that, under Judge Reed's Order of November 15, 2010, verified answers were to have been deposited in IKON no later than February 21, 2011. Similarly, fact witness disclosures are normally produced early in the discovery process under Rule of Civil Procedure 26(a) and defense counsel is entitled to use those disclosures in preparation for a deposition. Further, we see no reason, and plaintiffs' counsel has provided us with none, to distinguish Social Security records from the other records plaintiffs' counsel has agreed to provide. To the extent those records are in their possession, they must be provided to defense counsel. Otherwise, signed authorizations to obtain those records must be provided to the defense at least 30 days prior to the date the deposition is to occur.

14. Plaintiffs may petition the Court to modify the provisions of this protocol for good cause such as in situations in which the plaintiff suffering from a serious medical condition such as to be deemed *in extremis*.

And it is so ordered.

BY THE COURT:

/s/ David R. Strawbridge
DAVID R. STRAWBRIDGE
UNITED STATES MAGISTRATE JUDGE

Dated: August 4, 2011